



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/724,114 | 12/01/2003 | Adrian Meredith Sunter | IS-US030581 | 9931 |

22919 7590 10/17/2007
GLOBAL IP COUNSELORS, LLP
1233 20TH STREET, NW, SUITE 700
WASHINGTON, DC 20036-2680

| |
|----------|
| EXAMINER |
|----------|

WEEKS, GLORIA R

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3721

| | |
|-----------|---------------|
| MAIL DATE | DELIVERY MODE |
|-----------|---------------|

10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/724,114

Applicant(s)

SUNTER ET AL.

Examiner

Gloria R. Weeks

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☒ Claim(s) 9-20 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9-12, 14, 15, 18-24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandolo (USPN 5,361,560) in view of Kammler et al. (USPN 5,832,700).

In reference to claims 9-12, Sandolo discloses a flavoring system comprising: a measurer 10 for measuring a quantity of articles (column 3 lines 55-58); a flavoring apparatus 21A, 22A, 23A, 24A downstream of the measurer 10, wherein the quantity of flavoring is determined based on the quantity of articles measured (column 2 lines 6-9); a packager 14; and a controller (control valve) that controls the predetermined quantity of flavoring supplied by the flavoring apparatus, wherein the quantity of articles and flavoring is measured by a predetermined flow rate. Sandolo does not disclose a check measurer. Kammler et al. teaches a weighing and flavoring system comprising: a measurer 20 for measuring a quantity of articles (column 4 lines 22-26); a check measurer 17 downstream of the measurer 20 for weighing the articles; a packager 11; and a control means 31 for controlling the predetermined quantity of articles supplied by the measurer according to a value indicative of a difference between the predetermined quantity of articles and the actual quantity of articles provided as measured by the check measurer 17. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the flavoring system of Sandolo to include a check measurer and control means, since column 1 lines 46-50 of Kammler et al. states that such a modification

Art Unit: 3721

ensures that an exact quantity of flowable products are dispensed, and proper adjustments can be made to subsequent packages based on the determined weight of the mixture and the packaging.

With respect to claims 14, 15, 18, 20 and 23, Sandolo discloses a method and apparatus comprising: providing a weigher 10; providing an additive dispenser 21A, 22A, 23A, 24A; providing a vertical form, fill and seal packaging machine 14; a mixer 15; and providing a controller (control valve) that controls the additive dispenser 4621A, 22A, 23A, 24A. Sandolo does not disclose a check weigher. Kammler et al. teaches a weighing and flavoring system comprising: a measurer 20 for measuring a quantity of articles (column 4 lines 22-26); a check measurer 17 downstream of the measurer 20 for weighing the articles; a packager 11; and a controller 31 for controlling the predetermined quantity of articles supplied by the measurer in a subsequent control cycle in response to an output of the combined weight of the package and the articles in a current control cycle (column 2 lines 6-22). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the flavoring system of Sandolo to include a check measurer and control means, since column 1 lines 46-50 of Kammler et al. states that such a modification ensures that an exact quantity of flowable products are dispensed, and proper adjustments can be made to subsequent packages based on the determined weight of the mixture and the packaging.

Regarding claim 19, Sandolo '560 discloses an apparatus comprising a weigher with a bulk hopper 11 and an additive dispenser including a gas transport 30, but does not disclose the additive dispenser having a bulk hopper. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the additive dispenser of Sandolo '560 to include a bulk hopper, since column 3 line 40-column 4 line 7 of Sandolo '283 suggests that such

Art Unit: 3721

a modification effectively mixes the additive substance dispense from the additive dispenser with a secondary substance while guiding the mixture of the additive substance and the secondary substance in to a package.

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sandolo (USPN 5,361,560) in view of Kammler et al. (USPN 5,832,700) as applied to claim 9, and further in view of Parliament et al. (USPN 3,655,397).

Regarding claim 13, Sandolo discloses different types of flavoring (column 1 lines 67-68) dispensed from the flavoring apparatus. Parliament et al. teaches liquid flavoring (column 4 lines 50-51) having different concentrations (column 5 lines 24-56). It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the flavoring apparatus such that the predetermined flavoring supplied varies based on the type of flavoring supplied, since Parliament et al. suggests that different concentrations of flavoring are desirable.

4. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sandolo (USPN 5,361,560) in view of Kammler et al. (USPN 5,832,700) as applied to claim 14 above, and further in view of Sandolo (USPN 5,690,283).

5. With respect to claim 16, Sandolo '560 discloses a mixer 15 that aids in the combination of the articles from a weigher with an additive dispensed from an additive dispenser, but neither discloses an Archimedean screw nor a combinational weigher. Sandolo '283 teaches an apparatus comprising: a combinational weigher 13 (column 4 lines 22-30); an additive dispenser 46 including a hopper 35; a packaging machine (column 4 lines 47-49); a mixer including an Archimedean screw 38; and a controller 50 that controls the additive dispenser 46 in response to an output from the weigher 18 of a quantity of articles supplied to the additive dispenser 46. It

Art Unit: 3721

would have been obvious to one having ordinary skill in the art at the time of the invention to modify the mixer of Sandolo '560 to include an Archimedean screw, since column 3, lines 48-52 of Sandolo '283 states that such a modification effectively mixes an additive with a product.

6. Claims 17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandolo (USPN 5,361,560) in view of Kammler et al. (USPN 5,832,700) as applied to claims 14 and 20 above, and further in view of Nakamura et al. (USPN 6,301,859).

In reference to claims 17 and 22, Sandolo discloses a weigher that dispenses a product for packaging, but does not disclose a combinational weigher. Nakamura et al. teaches vertical form, fill, and seal packaging system, wherein product is provided for packaging from a combinational weigher. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the system of Sandolo to include a combinational weigher, since column 1 lines 25-55 of Nakamura et al. state that such a modification provides effective distribution of product by allowing a predetermined weight of product to be dispensed from the weigher within a predetermined tolerance.

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sandolo (USPN 5,690,283) in view of Kammler et al. (USPN 5,832,700) as applied to claims 14 and 20 above, and further in view of Dove et al. (USPN 6,953,004).

With respect to claim 25, Sandolo disclose a method of flavoring and packaging food, but does not disclose the food to specifically be potato chips. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Sandolo to include the food item of potato chips, since Dove et al. teaches that it is well known in the art to flavor and package potato chips.

Allowable Subject Matter

8. Claims 1-8 are allowed.

Response to Arguments

9. Applicant's arguments filed with respect to independent claim 9 on July 18, 2007 have been fully considered but they are not persuasive.

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification.¹ Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination.* During examination, the claims must be interpreted as broadly as their terms reasonably allow.²

Examiner has interpreted Applicants invention as a system that provides a first structure to distribute a predetermined amount of a first substance, a second structure to distribute a predetermined amount of a second substance, a third structure that measures the actual combined amount of the first and second substance distributed from the first and second structures, and a control means that adjusts the distribution of the second substance based on the combined amount of the first and second substance measured and a predetermined combined amount of the first and second substance.

Upon further review of the prior art, and consideration of Applicant's arguments with respect to independent claim 9, Examiner maintains the 35 USC 103(a) rejection in view of Sandolo and Kammler et al., as Kammler et al. teaches an automatic control means that adjusts

¹ *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP § 2111.

² *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP § 2111.01.

Art Unit: 3721

the amount of a substance distributed according to a value indicative of the amount of substance actually distributed compared to a predetermined amount of substance to be distributed. While the system of Kammler et al. applies this rationale to dose a flowable substance, specifically a powder substance distributed by an auger/worm conveyor rather than a pump and valve distribution system as provided in the flavoring apparatus of Sandolo, column 1 lines 19-30 suggest that the check measuring control system can be applied to any system known to volumetrically dose a flowable substance, including a system that includes dosing a substance that is in correspondence to a product portion. Sandolo '283 further supports the knowledge of the art at the time of the invention, with respect to the automatic or computer controlled actuation of a valve and pump dosing system for the purpose of regulating and adjusting the volumetric dosing of a flowable material. Also, the use of the phrase "When the dosing device has a worm conveyor..." in column 2 line 37 further suggests that a worm conveyor is not the only known dosing device by which a flowable substance can be distributed, nor is it the only flowable device capable of implementing the controlled dosing of the control means. Therefore, Examiner maintains that the control means (valves and pumps) of Sandolo can be modified in view of Kammler et al. for the purpose of precisely volumetrically dosing a substance combined with a product portion, by comparing the predetermined amount dosed to the actual amount dosed from the system.

Applicant's arguments with respect to independent claims 14 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action: Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473.

The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

Gloria R. Weeks
Examiner
Art Unit 3721

/GRW/
October 11, 2007



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700